

CCRB INVESTIGATIVE RECOMMENDATION

Investigator: Kenneth Shelton	Team: Squad #2	CCRB Case #: 201810625	<input checked="" type="checkbox"/> Force	<input checked="" type="checkbox"/> Discourt.	<input type="checkbox"/> U.S.
			<input checked="" type="checkbox"/> Abuse	<input type="checkbox"/> O.L.	<input checked="" type="checkbox"/> Injury
Incident Date(s) Thursday, 11/01/2018 12:39 AM	Location of Incident: § 87(2)(b)	Precinct: 42	18 Mo. SOL 5/1/2020	EO SOL 12/16/2020	
Date/Time CV Reported Fri, 12/21/2018 3:34 PM	CV Reported At: CCRB	How CV Reported: Phone	Date/Time Received at CCRB Fri, 12/21/2018 3:34 PM		

Complainant/Victim	Type	Home Address
§ 87(2)(b)	§ 87(2)(b)	§ 87(2)(b)

Witness(es)	Home Address
§ 87(2)(b)	§ 87(2)(b)
§ 87(2)(b)	§ 87(2)(b)

Subject Officer(s)	Shield	TaxID	Command
1. Officers			PSA 7
2. POM Paul Basilone	25110	948304	PSA 7
3. LT Eric Dym	00000	933762	PSA 7

Witness Officer(s)	Shield No	Tax No	Cmd Name
1. POM Warren Ponds	14386	962024	PSA 7
2. POM Marcin Drozd	12468	960480	PSA 7
3. POF Heidi Morillotorres	02288	965806	PSA 7
4. POM Douglas Curry	12518	956562	PSA 7
5. POM Miguel Henriquez	09266	960653	PSA 7
6. LT Joel Witriol	00000	942838	PSA 7

Officer(s)	Allegation	Investigator Recommendation
A.POM Paul Basilone	Abuse: Police Officer Paul Basilone searched § 87(2)(b) in the Bronx.	§ 87(2)(b)
B.LT Eric Dym	Abuse: Lieutenant Eric Dym entered § 87(2)(b) in the Bronx.	§ 87(2)(b)
C. Officers	Force: Officers used physical force against § 87(2)(b)	§ 87(2)(b)
D.LT Eric Dym	Discourtesy: Lieutenant Eric Dym acted discourteously toward § 87(2)(b)	§ 87(2)(b)
E.LT Eric Dym	Abuse: Lieutenant Eric Dym damaged § 87(2)(b) s property.	§ 87(2)(b)

Case Summary

On December 21, 2018, § 87(2)(b) called the CCRB and filed this complaint.

On October 31, 2018, § 87(2)(b) and her boyfriend, § 87(2)(b) were involved in a dispute at § 87(2)(b) in the Bronx. During this argument, § 87(2)(b) s neighbor, § 87(2)(b) called 911 and reported an assault. At the conclusion of the argument, § 87(2)(b) entered the apartment while § 87(2)(b) remained standing in the hallway outside of the apartment.

Shortly after, Police Officer Paul Basilone, Lieutenant Joel Witriol, Lieutenant Eric Dym, all from PSA 7, along with additional officers, responded to the location. The officers spoke to § 87(2)(b) who informed them that he and § 87(2)(b) were involved in an argument. Police Officer Basilone knocked on the door to the apartment and removed a tissue from a hole located on the door and looked into the apartment (**Allegation A: Abuse of Authority- Search of Premises, § 87(2)(g)**). Police Officer Basilone knocked on the door again, repeatedly identified himself as a police officer, and spoke to § 87(2)(b) through the door.

§ 87(2)(b) opened the door approximately six inches and spoke to Police Officer Basilone. Immediately after this conversation, Police Officer Basilone, Lieutenant Dym, and additional officers entered the apartment (**Allegation B: Abuse of Authority- Entry of Premises, § 87(2)(g)**). After entering the apartment, officers used force to place § 87(2)(b) into handcuffs and remove her from the apartment (**Allegation C: Force - Physical Force, § 87(2)(g)**).

Lieutenant Dym opened a soda bottle in the apartment and poured its contents into the floor of her apartment (**Allegation D, Discourtesy – Action, § 87(2)(g)**)(**Allegation E, Abuse of Authority – Property Damaged, § 87(2)(g)**).

§ 87(2)(b) and § 87(2)(b) were arrested for child endangerment (BR 33).

Body worn camera (BWC) video from the BWC depicting the incident was received from the BWCs of Police Officer Heidi Morillortorres, Police Officer Warren Ponds, Police Officer Marcin Drozd, Police Officer Douglas Curry, Police Officer Miguel Henriquez, Police Officer Paul Basilone. The video is located in IAs #90 to 96 (BR 08-BR 14) and summarized in IAs #99-105 (BR 15 – BR 21).

Findings and Recommendations

Allegation (A) Abuse of Authority: Police Officer Paul Basilone searched § 87(2)(b) in the Bronx.

On December 28, 2018, § 87(2)(b) was interviewed at the CCRB (BR 02). § 87(2)(b) provided a telephone statement on January 17, 2019 (BR 03). On April 10, 2019, § 87(2)(b) was interviewed at the CCRB (BR 04). Lieutenant Joel Witriol was interviewed at the CCRB on October 29, 2019 (BR 05). Lieutenant Eric Dym was interviewed at the CCRB on December 19, 2019 (BR 06). Police Officer Paul Basilone was interviewed at the CCRB on January 13, 2020 (BR 07).

It is undisputed that § 87(2)(b) and § 87(2)(b) were involved in a dispute outside of § 87(2)(b) s apartment located at § 87(2)(b) in the Bronx, although it is in dispute whether the dispute became physical. § 87(2)(b) called 911 and reported an assault in progress. Police Officer Basilone and other officers responded to the location. Police Officer Basilone removed a tissue or paper that was covering a hole in § 87(2)(b) s door and looked into the apartment.

§ 87(2)(b) stated that she told the 911 operator that her neighbor was being hit and choked and that she sounded like she could not breathe. She said that the man might kill the woman, that the woman was yelling, and that there was a baby inside of the apartment. § 87(2)(b) told the operator to have the police come quickly because the man had already kicked down the door and that he might hurt the woman. She also told the operator that the woman had a three to five-year-old child. She also told the operator that the officers should come up the staircase as well as the elevator so that the man could not run away. § 87(2)(b) account was consistent with the information in the

EVENT generated as a result of her 911 call (BR 22).

Footage from Police Officer Ponds' BWC (BR 13) at 02:55 in the recording, shows Police Officer Basilone pushing a white object from a hole located in the door and looking into the apartment.

Police Officer Basilone testified that he was not sure what was in the hole, recalling that it was "something white," either paper or tissue. When asked why he looked into the apartment prior to making contact with § 87(2)(b), Police Officer Basilone stated that he been worried about what was happening inside after § 87(2)(b) remarked that § 87(2)(b) would "freak out." Police Officer Basilone wanted to see if § 87(2)(b) had anything in her hands, as he had been unaware of the circumstances inside the apartment.

The courts have established that officers may enter and search a location when they have on reasonable belief that there is an emergency at hand and there is an immediate need for their assistance and they have a reasonable basis to associate the emergency with the area to be searched. People V. Rodriguez 277 A.D. 3d 280 (2010) (BR 34).

§ 87(2)(g)

Allegation (B) Abuse of Authority: Lieutenant Eric Dym entered § 87(2)(b) in the Bronx.

Allegation (C) Force: Officers used physical force against § 87(2)(b)

It is undisputed that officers entered § 87(2)(b) in the Bronx. § 87(2)(b) stated that four officers arrived and banged on her apartment door multiple times. § 87(2)(b) spoke with an officer through the door, who asked if § 87(2)(b) was okay and if the officers could come inside the apartment. § 87(2)(b) responded that she was fine and asked for the officers to leave. The officers then continued to bang on the door loudly. § 87(2)(b) unlocked the door, cracked the door open six inches, and placed her left foot against the door. Police Officer Basilone stuck his head through the door and asked § 87(2)(b) if everything was okay and § 87(2)(b) responded yes. Police Officer Basilone then asked if the officers could enter the apartment and § 87(2)(b) asked if the officers had a warrant. In response, Police Officer Basilone placed his foot into the door and six uniformed officers then pushed into the apartment. § 87(2)(b) stumbled backward, landed on her stomach while an officer simultaneously grabbed § 87(2)(b) and immediately handcuffed her wrists and ankles. § 87(2)(b) stated during her CCRB interview that officers noticed a knife that she kept adjacent to her front door and that an officer remarked that, "She has a knife" in her hand. § 87(2)(b) denied that the knife was in her hand.

§ 87(2)(b) stated that when the officers arrived they asked him a series of questions regarding who he was, what he was doing there, if he lived there, what was the nature of his argument with § 87(2)(b) and if § 87(2)(b) was all right and who was inside the apartment. § 87(2)(b) provided the officers with his name, apartment number, told them he was a visitor, that he did not live there, that he was § 87(2)(b)'s boyfriend and that they had just had an argument. Approximately three officers knocked on § 87(2)(b)'s door. Two were positioned by the sides of the door, and one was in front. § 87(2)(b) told the officers that § 87(2)(b) was upset. The officers asked § 87(2)(b) if § 87(2)(b) had a history of depression or anti-psychotic and anti-social behavior. § 87(2)(b) told the officers that § 87(2)(b) mistrusted the police and did not like police officers. He also stated that she would be "freaked out" if they all approached her at once. As they were knocking, Police Officer Basilone announced the officers' presence and asked § 87(2)(b) if she was all right. § 87(2)(b) did not recall exactly what the officers had said to § 87(2)(b) as he had been in the midst of answering officers' questions. Approximately five to ten minutes later, § 87(2)(b) opened her door about an inch, a wide enough space that the officers could speak to her and "partially" see her. She spoke to

a police officer and told him she was all right and did not want help. The police officers told § 87(2)(b) they needed to come into her house, but § 87(2)(b) refused to let them in. As § 87(2)(b) was about to close her door, an officer put his foot in the door to stop the door from closing and forced it open with a push.

§ 87(2)(b) stated that she observed the interaction between § 87(2)(b) and the officers through her peephole. While the officers spoke to § 87(2)(b) through the door, she heard an officer say to § 87(2)(b) “You need to put the knife down.”

Police Officer Basilone stated that he remembered speaking at the door, but he did not remember if § 87(2)(b) had responded prior to opening the door. After knocking on § 87(2)(b)'s door “at least” five times, § 87(2)(b) opened the door “a crack,” approximately a “head width.” Through the door opening, Police Officer Basilone saw § 87(2)(b)'s entire head and that she was drinking a Capri sun. Depending on where he was angled, Police Officer Basilone could “see more.” Through the crack, Police Officer Basilone noticed garbage on § 87(2)(b)'s floor. He did not know if the garbage was due to the “struggle” she had just had with § 87(2)(b) or if the apartment was always in that state. Police Officer Basilone repeated the same questions to § 87(2)(b) “Did anything happen?” and “What happened?” § 87(2)(b) shook her head in response and denied that she had had a dispute with § 87(2)(b). Police Officer Basilone noted the inconsistent statements between § 87(2)(b) and § 87(2)(b). Throughout his interaction with § 87(2)(b) Police Officer Basilone was “thinking of the kid,” and seeing the garbage on the floor, he deduced that a fight had recently occurred and that one of them might have been lying to “cover something up.” Approximately five seconds into Police Officer Basilone’s conversation with § 87(2)(b) a lieutenant present at the scene—Police Officer Basilone did not remember his name— stated “You gotta get in there” but gave no reason for why they had to enter the apartment. After the lieutenant told Police Officer Basilone to enter the apartment, Police Officer Basilone told § 87(2)(b) he had to enter her apartment, § 87(2)(b) yelled, “No, no, no” and attempted to push the door forward and push Police Officer Basilone’s right arm away. He tried to open the door wider and pulled § 87(2)(b)'s arm to prevent her from pushing him. As Police Officer Basilone made physical contact with § 87(2)(b) she started screaming and became “distracted.” Police Officer Basilone tried to explain that “nobody was in trouble,” but § 87(2)(b) placed herself in the “fetal position” on the floor and had her arms “balled up” in front of her.

Lieutenant Dym stated that § 87(2)(b) opened the door enough for him to see from the hallway that § 87(2)(b) had a kitchen knife in her hand. Lieutenant Dym did not recall which hand § 87(2)(b) used to hold the knife or how far away from the door he was standing at this time. Lieutenant Dym told the other officers that § 87(2)(b) had a knife. Lieutenant Dym did not recall what was said to § 87(2)(b) at this point but he stated that the substance was to get her to drop the knife. § 87(2)(b) grasped the knife and did not drop it. Lieutenant Dym and two other uniformed police officers then pushed their way into the apartment.

Lieutenant Witriol stated that one or two officers spoke with § 87(2)(b) down the hallway from the apartment. § 87(2)(b) told the officers that § 87(2)(b) had a knife. Lieutenant Witriol did not recall if § 87(2)(b) provided any more information about the knife or what occurred before the officers arrived. Aside from telling the officers about the knife, § 87(2)(b) did not provide any other information. After she opened the door, Police Officer Basilone spoke with § 87(2)(b). One of the officers said out loud that there was a knife. Lieutenant Witriol did not recall when this was said and he did not recall an officer saying that the knife was in § 87(2)(b)'s hand. Lieutenant Witriol was not directly at the door when this happened. Because of this, he did not see the knife and could not attribute actions or dialogue to specific officers. At this point the officers at the door pushed through the door and entered. Lieutenant Witriol stated that the officers entered the apartment because of § 87(2)(b)'s emotional condition, the presence of a child, the fact that there was a prior altercation, and the presence of a knife.

The Domestic Incident Report (BR 24), prepared by Police Officer Ponds, notes that the officers responded to an assault in progress and that § 87(2)(b) had a knife in her hand. It also notes

that § 87(2)(b) was arrested for endangering the welfare of a child, criminal possession of a weapon, and obstruction of governmental administration.

Police Officer Drozd's BWC shows § 87(2)(b) open the door at 03:56 in the recording. Police Officer Basilone asks § 87(2)(b) "Is everything okay, what's going on?" § 87(2)(b) attempts to close the door and Police Officer Basilone places his left hand on the door to prevent it from closing. Police Officer Basilone continues to speak to § 87(2)(b) although the audio does not capture what is exactly said. At 04:19 in the recording, § 87(2)(b) asks, "Is there a warrant?" Police Officer Basilone responds, "We don't need a warrant" and proceeds to force his way into the apartment by pushing through the door (BR 09).

An officer may use force when it is reasonable to place a person in custody or to prevent escape from custody. In determining whether the use of force is reasonable, members-of-the-service should consider the nature and severity of the crime or circumstances, the actions taken by the subject, the duration of the action, the immediacy of the perceived threat or harm to the subject or member of service, the number of subjects in comparison to the number of members of service, and whether the subject is actively resisting custody or attempting to evade arrest by flight. NYPD Patrol Guide, Procedure 221-01 (BR 27).

To gain compliance of an uncooperative subject, an officer should apply no more than the reasonable force necessary. The situation should be assessed continually and the type and degree of force used should be adjusted as necessary. NYPD Patrol Guide, Procedure 221-02 (BR 28).

§ 87(2)(g)

Allegation (D) Discourtesy: Lieutenant Eric Dym acted discourteously toward § 87(2)(b)

Allegation (E) Abuse of Authority: Lieutenant Eric Dym damaged § 87(2)(b)'s property.

It is undisputed that Lieutenant Dym poured the contents of a nearby soda bottle onto the floor of § 87(2)(b)'s apartment.

Lieutenant Dym stated that he poured out the contents of the soda bottle in the apartment for the purpose of safeguarding the knife taken from § 87(2)(b). He stated that he decided to safeguard the knife in the soda bottle so that no one would get cut by it. When asked why he poured the contents of the bottle inside the apartment, Lieutenant Dym stated that "it was just water."

Police Officer MorilloTorres' BWC, 47:20 in the recording, shows Lieutenant Dym state, "Let me show you a trick, ready?" Lieutenant Dym picks up a soda bottle, opens it, and pours out its contents inside of the apartment. Lieutenant Dym states "put it here" and places the knife inside of the soda bottle (BR 08).

In Onderdonk v. State, 170 Misc. 2d 155 (1996), the court ruled that police officers can damage property only if doing so is reasonably necessary to carry out their duties (BR 30).

Patrol Guide procedure 203-10 states a police officer is prohibited from engaging in conduct prejudicial and discourteous to good order (BR 30).

§ 87(2)(g)

Civilian and Officer CCRB Histories

- This is the first CCRB complaint to which § 87(2)(b) has been party (BR 01).
- Lieutenant Eric Dym has been a member of service for 15 years and has been a subject in 16 other CCRB complaints and 28 allegations, of which two were substantiated in two cases:
 - 201114190 involved a substantiated allegation of a stop against Lieutenant Dym. The Board recommended command discipline and the NYPD imposed no disciplinary action based on the statute of limitations.
 - 201804541 involved a substantiated allegation of discourtesy-word against Lieutenant Dym. The Board recommended Command Discipline A and the NYPD imposed instructions.
- Police Officer Paul Basilone has been a member of service for 10 years and has been a subject in four other CCRB complaints and seven allegations, none of which were substantiated.

Mediation, Civil and Criminal Histories

- This complaint was not suitable for mediation.
- According to the Office of Court Administration (OCA), § 87(2)(b) has no history of convictions in New York City (BR 31).
- § 87(2)(b) filed a Notice of Claim with the City of New York claiming negligent supervision, emotional distress, physical pain/injury, illegal search and seizure, violation of her civil rights, negligent hiring, retention, and supervision of the individually named officers, loss of liberty, loss of dignity and reputation, harassment, assault and battery, and deliberate indifference, and seeking \$1,000,000 as redress (BR 32).

Squad No.: 2

Investigator: _____
 Signature Print Title & Name Date

Squad Leader: _____
 Signature Print Title & Name Date

Reviewer: _____
 Signature Print Title & Name Date